

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

KEVIN MICHAEL BENTLEY, et al.,	:	11 Civ. 1056 (RWL)
Plaintiffs,	:	<b><u>ORDER</u></b>
- against -	:	
ROBERT J. DENNISON, as former Chair, New York State Division of Parole (the Division) & in his individual capacity, et al.,	:	USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: <u>3-4-2020</u>
Defendants.	:	

**ROBERT W. LEHRBURGER, United States Magistrate Judge.**

This order addresses Plaintiffs' request (Dkt. 100) to sanction Defendants for failing to provide by February 25, 2020, a counter-offer to Plaintiffs' settlement demand as required by this Court's order dated January 15, 2020 (Dkt. 93) (the "Order").

In their February 25, 2020 letter to Plaintiffs providing other required information, Defendants refused to provide a counter-offer, instead contending that Plaintiffs' demand (first made in October 2019) was unreasonable and that any such counter-offer is premature and cannot be determined without more individualized considerations. And in response to Plaintiffs' letter to the Court requesting sanctions, Defendants argue that the Court cannot sanction them because the Court cannot require a party to make a settlement offer. The Court agrees that as a general rule it cannot coerce a party to make a counter-offer. There are at least three reasons, however, that the instant dispute is not at all typical.

First, the posture of the instant dispute differs materially from that of the typical case. While this case has been stayed pending progress of the parallel class-action,

*Betances v. Fischer*, No. 11 Civ. 3200 (“*Betances*”) case, the parties agreed to and have been in engaged for approximately two years in a long-standing, sustained settlement process applicable to both cases, engaging the Court’s assistance in that process.

Second, pursuant to a conference with the parties on January 14, 2020, the Court issued the Order requiring that, among other things, Defendants provide by February 25, 2020, “a counter offer to Plaintiffs’ October 17, 2019 settlement demand.” Defendants did not object to the Order and did not move for reconsideration of the Order. Instead, Defendants proceeded by unilaterally deciding to selectively comply with only a part of the Order.

Third, Defendants’ excuses for failing to provide a counter-offer are suspect. Among others, Defendants contend that “[a]t this point, [Plaintiffs’] settlement demand is based only on speculation as to liability and not on concrete evidence supporting Plaintiffs’ claims.” As Defendants well know, however, liability already has been established in *Betances*.

Accordingly, a hearing will be held at which Defendants shall show cause as to why they should not be required to comply with the January 15, 2020 Order and/or sanctioned. The hearing will take place on **April 9, 2020, at 9:30 a.m.**, in Courtroom 18D, United States Courthouse, 500 Pearl Street, New York, New York.

SO ORDERED.



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ROBERT W. LEHRBURGER  
UNITED STATES MAGISTRATE JUDGE

Dated: March 4, 2020  
New York, New York

Copies transmitted to all counsel of record.